

### **CLAIM AMENDMENTS**

Claim 45 has been amended to add description of an outer sheath to provide antecedent basis for the outer sheath recited later in the same claim.

### **REMARKS**

In response to the Office Action mailed June 5, 2007, Applicant respectfully requests the Examiner to reconsider the above-captioned patent application in view of the foregoing amendment and the following comments.

In the Office Action mailed June 5, 2007, the Examiner asserted that the reply filed February 10, 2007 was not fully responsive to the prior Office Action because “the response fails to specifically point out exactly what claimed limitations in new claims 43-49 are not met by the previously applied prior art”.

The claims in question, 43-49, are comprised of one independent apparatus claim, 43, having four dependent claims and one method claim, 48, having one dependent claim. These two independent claims will be considered individually. Claim 43 recites numerous differentiating and unobvious combinations of features that are not found in the prior art cited by the Examiner. Particularly the Examiner cited Voda, USP 5,462,561; Erb, USP 6,436,119 and Frazier, et al, USP 6,746,472 in the prior office action. Claim 43 describes a tissue anchoring apparatus having a penetrating member pre-biased forward in an axial direction. The teaching of an anchor having such a pre-biased penetrating member is not taught by Voda, Erb or Frazier. Furthermore claim 43 also describes a latch release for causing said pre-biased penetrating member to be released so that the penetrating member is projected forward in an axial direction. The idea of a release is not taught by Voda, Erb or Frazier because this cited art does not teach about pre-biasing a penetrating member and in the absence of such a pre-biased member there would be no need for a latch release to release such a pre-biasing as described by the applicants' current application. Therefore the Applicant submits that Claim 43 is in a condition for allowance over the prior art. Applicant submits that Claims 44-47 are also in condition for

allowance over the prior art, by virtue of their dependence from an allowable base claim, as well as their recitation of further novel and unobvious combination of features.

Claim 48 describes a method of anchoring a tissue to a luminal structure by positioning an apparatus next to a luminal structure wall and releasing a pre-biased penetrating member such that said penetrating member penetrates into said tissue. This feature may have advantages in placement of anchors into tissue particularly when the anchor is placed inside the body. By example only, in such cases where the anchor may be positioned deep inside the body, the ability to pre-bias an anchor such that it may penetrate the target tissue without necessarily requiring the operator to manually insert the anchor may be an advantage. The idea of pre-biasing an anchor apparatus such that the release of said biasing to project an anchor into a wall of tissue is not described by Voda, Erb or Frazier. Therefore the Applicant submits that Claim 48 is in a condition for allowance over the prior art. Applicant further submits that Claim 49 is also in condition for allowance over the prior art, by virtue of its dependence from an allowable base claim, as well as its recitation of further novel and unobvious combination of features.

### **CONCLUSION**

Applicant has properly and fully addressed each of the omissions cited in the Examiner's communication. Applicant respectfully submits that all claims of the present application are now in condition for allowance. Accordingly, issuance of a Notice of Allowance is most earnestly solicited. If the Examiner has any questions or believes further discussion will aid examination and advance prosecution of the application, a telephone call to the undersigned is invited.

Although an amendment have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendment is made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

The undersigned has made a good faith effort to respond to all of the communication in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if issues require clarification, the Examiner is respectfully

requested to call the Applicant's agent, Scott M. Evans at (714) 307-9290 to resolve such issue(s) promptly.

Respectfully submitted,

Dated: 9/4/07

By: 

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